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Solid Waste Environmental Assessment Plan

For

The Regional Municipalities of Metropolitan Toronto, York and Durham

Metropolitan Toronto Works Department

Refuse Disposal Division

439 University Avenue

Toronto, Ontario, M5G 1Y8



**PROJECT SCREENING
AND APPLICATION FOR
EXEMPTION ORDERS UNDER SECTION 29 OF
THE ENVIRONMENTAL ASSESSMENT ACT**

**MINISTRY OF THE ENVIRONMENT
ENVIRONMENTAL ASSESSMENT BRANCH**

Revised January 1983

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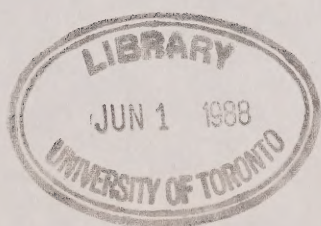
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TABLE OF CONTENTS

	<u>Page</u>
1. Purpose of this Document	1
2. Application of the Environmental Assessment Act	1
A) All Public Sector Projects Subject Unless Exempted	1
B) Guidelines for Environmental Assessment	2
C) Exemption Orders	2
D) Environmental Assessment Advisory Committee	3
3. Project Screening Criteria	4
A) Environmental Significance	5
B) Existence of an Emergency Situation	7
C) Overwhelming Public Interest	7
4. Application for Section 29 Exemptions	8
A) Justification	8
B) Site Map	9
C) Exemption Order Format	9
i) Title	9
ii) Proponent and Undertaking	9
iii) Injury, Damage and Interference	10
iv) Reasons for Exemption	11
v) Conditions of Approval	12
vi) Approvals and Filing of Regulations	13
vii) Receipt of Approved Exemption Order	14
D) Sample Exemption Order Format	14

1. Purpose of this Document

This document has been prepared by staff of the Environmental Assessment Branch, Ministry of the Environment, for use by proponents of projects which are subject to the Environmental Assessment Act. It is meant to assist proponents, public and reviewers in understanding how and why the Act has been applied to public sector projects, and to provide proponents with the project screening criteria in order to determine whether an exemption request would be justified.


If the proponent feels that he is justified in requesting an exemption, after applying the screening criteria to a particular project, he can refer to this document for instructions on the information that should be submitted as part of such a request.

2. Application of the Environmental Assessment Act

A) All Public Sector Projects Subject Unless Exempted

One of the most critical matters for the Ontario Government to resolve in developing and implementing the Environmental Assessment Act, has been determining which projects would be subject to the Act and which would not. Some kinds of projects typically have significant environmental effects and should require assessment. Others have no significant environmental effects and should be excluded. Between these extremes there is a large gray area comprised of projects which will have significant impacts in some circumstances and not in others.

In the measures taken to gradually implement the Environmental Assessment Act, the Ontario Government has attempted to provide legal certainty as to which undertakings will require environmental assessment. As a result, the law provides that all public sector projects will be subject to the Act, unless specifically exempted from the Act either by Regulation or by Order-in-Council (exemption order). To provide guidance in identifying undertakings which may be



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exempted, the Government established a policy that all environmentally significant undertakings of the public sector should be subject to the Act.

B) Guidelines for
Environmental Assessment

For those undertakings which require a full environmental assessment, a publication entitled General Guidelines for the Preparation of Environmental Assessments, prepared by staff of the Ministry of the Environment, is available to assist proponents in preparing environmental assessments (EAs) for such undertakings. It explains the content requirements of an EA, as set out in section 5(3) of the Act, and includes flow charts illustrating the major decision-making steps in the process. These guidelines also explain the two types of environmental assessment documents: individual and class.

These guidelines are available from the Ontario Government Publication Centre, 880 Bay Street, Toronto (416) 965-2054.

Staff of the Environmental Assessment Branch are available for consultation, to explain the Act and its Regulations. Proponents who are unsure if the Act applies to particular projects, or who need assistance in interpreting the Act's requirements, should speak with staff at (416) 965-3198 or 965-4139.

C) Exemption Orders

Section 29 of the Environmental Assessment Act provides for the granting of exemption orders by the Minister of the Environment, with the approval of the Lieutenant Governor in Council.

The EA Act reads,

The Minister, with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate, may by order,

- (a) exempt the undertaking or the proponent of the undertaking from the application of this Act or the regulations or any matter or matters provided for in this Act or the regulations subject to such terms and conditions as the Minister may impose;
- (b) suspend or revoke an exemption referred to in clause (a);
- (c) alter or revoke any term or condition of an exemption referred to in clause (a).

Several points are worth noting about the way this provision is carried out.

- 1) The Minister is required to consider an exemption request with regard to an explicit standard. The Minister is required to give his reasons for determining why the exemption should be granted, with reference to that standard.
- 11) Although the exemption is recommended by the Minister of the Environment, the Minister may only grant the exemption with the approval of Cabinet or a designated group of Cabinet Ministers.
- 111) All exemption orders made under section 29 are made public, as required by section 31 of the EA Act.

D) Environmental Assessment Advisory Committee

To assist the Government in making decisions on matters pertaining to exemption and designation of undertakings under the EA Act, the Premier announced on December 7, 1982, that he would appoint a new and permanent Environmental Assessment Advisory Committee. This action recognizes the need for procedures to allow public input before a Government decision has been made on such matters. The function of the Committee will be to review proposals for the exemption or designation of projects under the

EA Act, prior to decisions on these matters being made by the Government. The Minister of the Environment will advise the Premier on the establishment of the Advisory Committee. Submissions to the Advisory Committee may be addressed via the Office of the Minister of the Environment.

3. Project Screening Criteria

As noted, the law requires that public sector projects are to be subject to the EA Act unless specifically exempted. It is reasonable to expect that some cases will arise where the application of the Act to a particular project or type of project is not warranted, or will result in some type of damage or interference not deemed to be in the public interest.

It should be noted that many municipal undertakings are still being phased-in under the EA Act. Projects which were at an advanced stage of planning when the Act came into force for municipalities and municipal bodies (e.g., transit authorities) and projects for which class EAs are being prepared, are exempted by regulation. Such regulations contain "grandfather clauses" which set out limited periods of exempt status during which implementation is to be commenced or the class EA approved.

Proponents with concerns about the status of their projects under the EA Act should consult section 3 of the Act, the current regulations and exemption orders. Staff of the Environmental Assessment Branch are available to provide assistance when questions arise.

Now that the phasing-in of the EA Act for the provincial public sector is complete, the granting of exemption orders is subject to the following three criteria: environmental insignificance, existence of an emergency situation or existence of overwhelming public interest. Exemptions will only be considered where a compelling argument, based upon these criteria, can be made by the proponent in favour of exemption.

The following screening criteria are provided so that proponents can assess these projects to determine whether applying the Act to such projects is warranted.

A) Environmental Significance

To assist proponents in screening projects to determine if the project is environmentally significant, it is suggested that the proponent ask the following questions:

Might the proposed undertaking

- * Conflict with the environmental goals, objectives, plans, standards, criteria or guidelines adopted by the Province or the community where the project is to be located?
- * Have an effect on any unique, rare or endangered species, habitat or physical feature of the environment?
- * Have effects on an area of ten acres (or equivalent hectares) or greater?
- * Have effects on adjacent persons or property or persons or property not associated with the undertaking?
- * Necessitate the irreversible commitment of any significant amount of non-renewable resources?
- * Pre-empt the use, or potential use, of a significant natural resource for any other purpose?
- * Result in a substantial detrimental effect on air or water quality, or on ambient noise levels for adjoining areas?
- * Cause substantial interference with the movement of any resident or migratory fish or wildlife species?
- * Establish a precedent or involve a new technology, either of which is likely to have significant environmental effects now or in the future?

- * Be a pre-condition to the implementation of another undertaking?
- * Generate secondary effects (e.g., land development, population growth) likely to significantly affect the environment?
- * Block views or adversely affect the aesthetic image of the surrounding area?
- * Substantially change the social structure or demographic characteristics of the surrounding neighbourhood or community?
- * Adversely affect human health?
- * Overtax existing community services of facilities (e.g., transportation, water supply, sanitary and storm sewers, solid waste disposal system, schools, parks, health care facilities)?
- * Be highly controversial?

If all these questions can be answered with "no", an application for exemption would appear to be warranted. On the other hand, to the extent that any of the questions must be answered with "yes" or "maybe", the balance could be tipped in favour of the conclusion that the undertaking may have environmentally significant effects of sufficient significance to require an environmental assessment to be prepared.

It must be emphasized that these screening criteria are arbitrary and designed only to give the proponent an indication of where an undertaking lies on the continuum of significant to insignificant environmental effects. The amount of information necessary to justify a proponents' claim that the proposal is environmentally insignificant will vary according to the difficulty in pin-pointing the level of significance of a project.

In the final analysis, the decision on whether or not to grant an exemption from the Environmental Assessment Act must be made by the Minister of the Environment with the approval of the Cabinet.

In considering whether or not to apply for an exemption, after applying the screening criteria, proponents should recognize that the Minister and the Cabinet are guided by the policy that all environmentally significant public sector undertakings should undergo environmental assessment. They must also have regard for the standard provided in section 29 of the EA Act which provides that an undertaking should only be exempted if the injury, damage or interference that would be caused by the application of the Act outweighs the public interest ensured by full application of the Act to this project.

B) Existence of an Emergency Situation

Cases may arise where there is an immediate threat to the environment, including public health and safety, which require immediate action. In such circumstances, an exemption could be sought on the grounds that if emergency action is not taken immediately, the injury, damage or interference to persons or properties which would result would outweigh the benefits of applying the EA Act.

It should be noted that section 4 of Ontario Regulation 293 already contains an exemption which would apply to many such emergency situations. This provision allows for the maintenance and repair of an undertaking for which the approval of the Minister to proceed was not required under the Environmental Assessment Act. This provision would exempt the emergency repair or replacement of older structures (e.g., dams, sewage treatment plants) provided that their purpose, use, capacity or location is not substantially changed.

C) Overwhelming Public Interest

Situations may arise where a proponent proposes that implementing a particular undertaking is a matter of such overwhelming urgency that the public interest would not be served by applying the Environmental Assessment Act to it.

Proponents seeking exemption on such grounds are advised to submit their application and justification for such an exemption directly to the Minister of the Environment, who may bring

it before the Cabinet for consideration in principle. If Cabinet decides that such an exemption should be granted, then the Ministry of the Environment staff will consult with the proponent to ensure that the documents required for formal approval of the exemption are properly prepared.

4. Application for Section 29 Exemptions

When a proponent has reviewed a proposed undertaking on the basis of the screening criteria and the various grounds for exemption which are set out above, and has come to the conclusion that he has a valid, justifiable case for requesting an exemption, then he should make an application to the Minister of the Environment for an exemption pursuant to section 29 of the EA Act. The following discussion outlines the kind of information that a proponent should include in a request for an exemption. This procedure is intended to have two benefits:

- i) To discourage any requests for exemption that are frivolous or unfounded or without solid justification
- ii) To avoid delays in bringing exemption requests before Cabinet because of a lack of necessary information.

A) Justification

It should be stressed here that in applying for an exemption, the proponent must justify his application to the Minister of the Environment. A proponent's application for exemption should provide a description of the kind of screening the project has gone through to lead the proponent to request an exemption, and any measures to be undertaken by the proponent, if the exemption is granted, to ensure that significant environmental effects do not occur.

The Minister of the Environment will need to be supplied with sufficient information to be able to make a judgment on the request and a recom-

mendation to Cabinet as to whether the project should be exempted. Those exemption requests with insufficient justification will be returned to the proponent.

B) Site Map

In order to more clearly determine the location and scale of the project, a site map should be included with the request. The map should illustrate the relative location of the project, any boundaries, the natural features, and any sensitive areas which should be considered.

The following section illustrates the format for exemption orders. Proponents are requested to fill in the information required in this format and send it to the Minister with any additional pertinent information.

C) Exemption Order Format

In the following sections, the bold type indicates the wording which should be common to all exemption orders, while the plain type text explains the information which the proponent is expected to provide.

i) Title

**ORDER MADE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT
EXEMPTION - (Proponent)**

All exemptions are to be titled in this manner for consistency. The exemption order identification number in the upper right corner of the exemption order will be assigned by Ministry of the Environment staff if the order is submitted to Cabinet for approval (e.g., MNR-17/2).

ii) Proponent and Undertaking

**Having received a request from the (proponent)
that an undertaking, namely:**

The legal name of the proponent appears here. The name and office of the person applying for exemption should be clearly indicated in any correspondence.

The undertaking for which an exemption is sought should be clearly stated. This description should be prefaced by at least one of the words mentioned in the definition of "undertaking" used in the Act: i.e., enterprise, activity, proposal, plan or program, for example, "the activity of constructing and operating the York/Durham servicing scheme".

Subsection 1(o)(i) of the Act defines "undertaking" to include "proposals, plans or programs in respect of enterprises or activities". By using a broad interpretation of "undertaking", proponents may be able to handle many individual activities in one exemption application, where appropriate.

As indicated earlier in this document, all orders of the Minister under section 29 are made public. Where exemptions are sought for programs, a list of the individual activities which make up the program should be appended so that it can be included in the public record which the Ministry of the Environment maintains for exemption orders.

In some cases it may be necessary to include a short explanation of what is involved in the undertaking, for example, in the case of compound projects or programs, all of the major components, the geographic area in which the undertaking is proposed, or similar details.

be exempted from the application of the Act pursuant to section 29; and

iii) Injury, Damage or Interference

Having been advised that if the undertaking is subject to the application of the Act, the following injury, damage or interference with the persons and property indicated will occur:

The person(s) or property to be injured, damaged or interfered with should be specified. The injury, damage or interference which will be suffered if the exemption is not granted should be specified as being an injury, damage or interference.

Separate persons or property to be affected and separate injuries, damages or interferences which may occur should be dealt with in separate paragraphs. Use successive capital letters to identify each paragraph (i.e., A, B, C.).

iv) Reasons for Exemption

Having weighed such injury, damage or interference, against the betterment of the people of the whole or any part of Ontario by the protection, conservation and wise management of Ontario of the environment which would result from the undertaking being subject to the application of the Act;

The undersigned is of the opinion that it is in the public interest to order and orders that the undertaking is exempt from the application of the Act for the following reasons:

Possible reasons to be used by the Minister of the Environment in granting an exemption should be suggested by the proponent in his draft exemption request. It is important that these reasons demonstrate that the injury, damage or interference described by the applicant has been weighed against the purpose of the Act (i.e., "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment"), and that the public interest will be best served by an exemption rather than an environmental assessment.

The reasons given in that section of the application should also be used to provide the rationale for any conditions the proponent proposes that the Minister place upon the approval of the order. [Conditions are discussed in the next subsection.]

As with the section on injuries, the appropriate format is to list separate and distinct reasons for the exemption in separate paragraphs which are identified by successive capital letters (i.e., A, B, C).

v) Conditions of Approval

This exemption is subject to the following terms and conditions:

Terms and conditions to be imposed on the exemption should be suggested by the applicant in his exemption request. These can be such things as an expiry date or the filing of supplementary information in the public record, and others to be suggested by the proponent where these seem appropriate. Conditions should be applied in the following circumstances:

- ° In cases where programs are to be carried out by implementing separate activities in different areas of the province, a condition should be suggested which outlines a means of informing the public - in the affected area - of the activity to be exempted; this could be done, for example, by filing lists of projects in the public record.
- ° Where an exemption order relates to another exemption order or to an environmental assessment, a condition should be added to reflect the conditions of the other exemption order or EA so that consistency between them can be maintained.
- ° When a temporary exemption is requested to allow a proponent time to prepare a class environmental assessment, conditions often set the criteria to be addressed in a proponent's class environmental assessment for such undertakings.
- ° Conditions can be used to provide for public input into the planning for those projects which could be carried out under an exemption.

- ° Where a number of projects which will be implemented over a period of time are being exempted, a condition could require the filing of a list of the projects exempted under the order - prior to commencement of the undertaking or parts of the undertaking. Such a list should identify the project, indicate its purpose, location, estimated completion cost, and proposed dates of commencement and completion. These lists will be available to the public.

In general, a condition on an exemption order should indicate a suggested expiry date of the exemption.

vi) Approvals and the Filing of Regulations

The following is a mandatory part of the exemption order which should appear in the form indicated here, at the end of every exemption order. All of these items will be completed by the Minister if and when the exemption order is approved by the Minister and by Cabinet.

DATED this _____ day of _____, 198_.

Minister of the Environment

O.C. No. _____/8_

O. Reg. No. _____/8_

Filed with the Registrar of Regulations _____
_____, 198_

Ontario Gazette _____, 198_

vii) Receipt of Approved
Exemption Order

Once the exemption order has been approved by the Minister and Cabinet, it is signed by the Lieutenant Governor-in-Council and filed with the Registrar of Regulations, and it is published in the Ontario Gazette. As soon as it is filed, the applicant will be notified and, if he/she requests it, a signed exemption order will be sent to the applicant.

D) Sample Exemption Order Format

- Exemption Order No.

ORDER MADE UNDER THE
ENVIRONMENTAL ASSESSMENT ACT

Exemption - Proponent

Having received a request from the

(insert name of Proponent)

that an undertaking, namely:

(describe the undertaking including at least
one of the words from the definition in
(Section1(o)(i))

be exempt from the application of the Act
pursuant to section 29; and

Having been advised that if the undertaking is
subject to the application of the Act, the
following injury, damage or interference with
the persons and property indicated will occur:

- A. (describe the various types of damage or
interference which will occur and who or
- B. what will be affected by each type)

Having weighed such injury, damage or interfer-
ence against the betterment of the people of the
whole or any part of Ontario by the protection,
conservation and wise management of the environ-
ment which would result from the undertaking
being subject to the Act;

The undersigned is of the opinion that it is in the public interest to order and orders that the undertaking is exempt from the application of the Act for the following reasons:

- A. (set out any reasons which justify the exemption and which demonstrate that the injury or damage has been weighed against the purpose of the Act and that public interest will be best served by an exemption rather than an environmental assessment)
- B. against the purpose of the Act and that public interest will be best served by an exemption rather than an environmental assessment)

This exemption order is subject to the following terms and conditions:

1. (set out any terms and conditions which might make the requested exemption justified or consistent with the reasons for issuing the exemption)
2. for issuing the exemption)

Date this _____ day of _____, 198__

Minister of the Environment

O.C. No. _____/8__

O. Reg. No. _____/8__

Filed with the Registrar of Regulations, _____, 198__

Ontario Gazette _____, 198__

NOTE: For samples of the wording and exact format of exemption orders, reference should be made to the Ontario Gazette or a recent issue of EA Update.

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